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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

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Amendment of Section 2.106 of the
Commission's Rules to Allocate
Spectrum at 2 GHz for Use
by the Mobile-Satellite Service)

ET Docket No. 95-18
RM-7927
PP-28

To: The Commission

REPLY COMMENTS OF BELL SOUTH

BellSouth Corporation ("BellSouth"), on behalf of its wireless subsidiaries and affiliates, hereby replies to comments submitted in response to the Commission's *Further Notice of Proposed Rule Making* in the captioned docket. 62 Fed. Reg. 19538 (April 22, 1997).¹ As discussed in its initial comments, BellSouth supports requiring Mobile-Satellite Service ("MSS") licensees to relocate incumbent licensees pursuant to the Emerging Technology spectrum clearing plan.² BellSouth hereby opposes those commenters who claim that (i) the Emerging Technology and/or Personal Communications Services ("PCS") relocation rules are unworkable

¹ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, ET Docket No. 95-18, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 97-93 (Mar. 14, 1997). Throughout its comments, BellSouth uses "*First Report*" when it is citing to the FCC's decision and "*FNPRM*" when it is referencing the *Further Notice*.

² BellSouth Comments, ET Docket No. 95-18, at 1-10 (June 23, 1997). *Accord* West Central Illinois Educational Telecommunications Corporation ("CONVOCOM") Comments, ET Docket No. 95-18, at 2 (June 23, 1997); APCO Comments, ET Docket No. 95-18, at 3-5 (June 23, 1997); State of California Comments, ET Docket No. 95-18, at 4 (June 23, 1997); American Petroleum Institute ("API") Comments, ET Docket No. 95-18, at 3-9 (June 23, 1997).

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for MSS or (ii) all incumbent 2 GHz licensees that must relocate to clear spectrum for MSS use should be required to negotiate collectively.

I. THE RELOCATION PRINCIPLES ESTABLISHED IN THE EMERGING TECHNOLOGY DOCKET AND APPLIED TO PCS SHOULD BE EXTENDED TO MSS

As a threshold matter, BellSouth demonstrated in its initial comments that the Commission has already decided to require MSS licensees to bear all costs associated with clearing the 1990-2025 MHz band of incumbent licensees. *First Report* at ¶ 33. This decision is consistent with the general policies adopted in the *Emerging Technology* docket, as well as the relocation rules adopted for PCS. MSS licensees and other interested parties had ample opportunity to comment on this issue in both the *Emerging Technology* docket and the initial notice in this proceeding. The subject *FNPRM* does not reopen this issue. Accordingly, comments opposing the FCC's decision to require MSS licensees to bear the costs of relocation are not timely and should be disregarded.

Moreover, the Commission should not adopt a relocation plan for MSS that differs substantially from the one adopted for PCS. Some commenters claim that there are important distinctions between PCS and MSS which would justify differential regulation,³ but this simply is not true. For example, the MSS Coalition claims that the PCS relocation rules were premised on the theory that "PCS operators and existing incumbents could not share spectrum," and thus a different relocation policy should be adopted for MSS licensees because MSS and fixed services

³ Joint Comments of the Association for Maximum Service Television, Inc., the National Association of Broadcasters and the Radio Television News Directors Association ("Joint Commenters"), ET Docket No. 95-18, at 6-7 (June 23, 1997); MSS Coalition Further Comments, ET Docket No. 95-19, at 12-16 (June 23, 1997).

("FS") licensees should be able to share the 2 GHz band.⁴ No support is provided, however, for the proposition that PCS relocation policy was developed because PCS and FS licensees could not share spectrum.

The Commission's rules only require PCS licensees to relocate FS incumbents that would experience interference from PCS operation.⁵ Indeed, BellSouth and other PCS licensees share spectrum with a number of FS incumbents. Comsearch, a independent engineering firm specializing in spectrum management, even analogized MSS/FS sharing to the sharing arrangements developed in the PCS context.⁶

Assuming *arguendo* that the PCS relocation policy was based on the inability to share spectrum, it still would be premature to claim that FS and MSS licensees can share spectrum. As the Commission has recognized, sharing criteria have not yet been adopted. *First Report* at ¶ 42. Until such criteria are established, the ability for FS and MSS licensees to share is questionable.⁷

Ironically, while the MSS Coalition argues that the PCS relocation policy is unworkable for MSS because of the possibility for sharing, the Joint Commenters maintain that the PCS

⁴ MSS Coalition Comments at 12.

⁵ Compare 47 C.F.R. § 24.239 with *First Report* at ¶ 42.

⁶ Comsearch Comments, ET Docket No. 95-19, at 4-5 (June 23, 1997). BellSouth concurs with Comsearch and notes that the arguments espoused by MSS interests against the PCS relocation policy are very similar to the arguments proffered in the *Emerging Technology* docket and by PCS interests in the PCS context against requiring new entrants to pay for the relocation of incumbent FS licensees. No new arguments have been presented here.

⁷ See Comments of Burlington Northern and Santa Fe Railway Company and Norfolk Southern Corporation, ET Docket No. 95-18, at 3, 6 (June 23, 1997) ("it is most unlikely that MSS, BAS and FS could share any band without incurring or causing harmful interference . . . BNSF and NS are skeptical that sharing [between MSS and FS licensees] is technically feasible.").

policy should not be extended to MSS because MSS and BAS licensees cannot share spectrum.⁸ As discussed above, however, the ability of MSS to share with other services has not yet been established.

In any event, principles of regulatory parity favor the adoption of similar relocation plans for MSS and PCS. Despite the claims of the MSS Coalition that disparate regulation is somehow warranted because MSS licenses will be granted on a nationwide basis,⁹ there is no justification for such disparate regulation. MSS licensees will compete directly with PCS licensees and already have a competitive advantage *vis-a-vis* PCS because MSS licensees are issued on a nationwide basis, whereas PCS licenses were not. MSS licensees will be able to provide seamless nationwide service pursuant to their licenses. PCS licensees, on the other hand, must either acquire numerous individual licenses to form a nationwide system or must rely on roaming to provide nationwide coverage. In any event, before nationwide PCS can be offered, PCS licensees must relocate incumbent FS licensees that would be adversely affected by PCS operations. MSS licensees should be subject to the same requirement. Providing MSS licensees with less burdensome relocation requirements would merely provide MSS operators with another competitive advantage *vis-a-vis* PCS licensees, at the expense of incumbent users.

Although it is true that MSS licensees must relocate all BAS licensees prior to commencing operations, this does not warrant adoption of a relocation plan that differs from PCS. The cost of BAS relocation should have been factored into the business plan of MSS licensees as a cost of doing business.

⁸ Joint Commenters at 6-7.

⁹ MSS Coalition Comments at 15.

The MSS Coalition also claims that the *Emerging Technology* relocation plan should not be applied to MSS because it would undermine the Commission's decision to permit sharing.¹⁰ This argument is not unique to MSS, however, and applies equally to all emerging technology providers and does not justify treating MSS licensees differently than PCS licensees. Moreover, many PCS licensees continue to share spectrum with incumbent FS licensees.

The MSS Coalition's concern that incumbent 2 GHz FS licensees would demand relocation if the PCS relocation plan were extended to MSS also is unfounded. FS licensees can only demand relocation if MSS operations would cause interference with the FS operations pursuant to the interference standards being developed by TIA. Importantly, this very argument was raised in the *Emerging Technology*/PCS context and rejected by the Commission.¹¹ There is no reason to reach a different conclusion here.

In sum, the spectrum sharing criteria being developed by TIA should permit MSS licensees to relocate incumbent 2 GHz MSS licensees on a link-by-link basis.¹² To the extent all BAS licensees must be relocated prior to MSS operations, this would not disadvantage MSS licensees *vis-a-vis* other emerging technology providers because the costs of such relocation should have been factored into the cost of doing business. Thus, no "additional" costs will be imposed on MSS licensees by extending the *Emerging Technology* relocation procedures to MSS.

¹⁰ MSS Coalition Comments at 13-14.

¹¹ See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, *Memorandum Opinion and Order*, 9 F.C.C.R. 1943, 1949-51 (1994); Southwestern Bell Mobile Systems Comments, WT Docket No. 95-157, at 7 (Nov. 30, 1995).

¹² MSS Coalition Comments at 10.

II. INCUMBENT 2 GHZ LICENSEES SHOULD NOT BE FORCED TO NEGOTIATE RELOCATION ON A COLLECTIVE BASIS

BellSouth opposes any proposal to require incumbent 2 GHz FS licensees to negotiate relocation on a collective basis.¹³ FS licensees use their spectrum for vastly different purposes. The Commission has already recognized that public safety entities are entitled to a longer transition period than private licensees because of the limited resources available to public safety licensees. Moreover, public safety licensees are likely to have greater concerns about comparable replacement equipment than a licensee using FS spectrum to provide a redundant link in a communications network. Similarly, railroad companies using FS spectrum to run traffic signals would generally be expected to have different needs with regard to replacement facilities than a company using the same spectrum for redundant links in a communications network. The company using the spectrum for redundant links may be willing to trade off a certain level of reliability for lower operating costs, whereas a railroad or public safety entity would be unwilling to make such a trade-off. Given the wide variety of uses for FS spectrum, FS licensees must be permitted to negotiate relocation terms on an individual basis.

CONCLUSION


For the foregoing reasons, as well as those set forth in BellSouth's initial comments, the Commission should (i) extend the relocation procedures established in the *Emerging Technology*

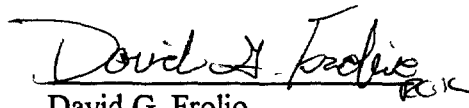
¹³ See Joint Commenters at 7-9; Society of Broadcast Engineers, Inc. Comments, ET Docket No. 95-18, at 4 (June 20, 1997).

docket, as implemented for PCS, to the MSS industry, and (ii) permit incumbent 2 GHz licensees to negotiate relocation on an individual basis.

Respectfully submitted,

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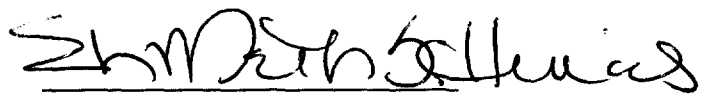
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